

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
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)	
Implementation of Sections 309(j) and)	WT Docket No. 99-87
337 of the Communications Act of 1934)	
as Amended)	
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To: The Commission

PETITION FOR RECONSIDERATION

The Central Station Alarm Association (“CSAA”), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, respectfully requests reconsideration of the *Memorandum Opinion and Order* released by the Federal Communications Commission (“Commission”) April 18, 2002.¹ Specifically, CSAA requests reconsideration of the Commission's use of the term "public at large" in its interpretation of Section 309(j)(2) of the Communications Act of 1934, as amended ("the Act"),² regarding public safety radio service licenses and construction permits that shall be exempt from FCC auctions.

I. STATEMENT OF INTEREST

CSAA was created in 1950 and represents entities providing central station alarm security protection services approved by Underwriters Laboratories, Factory Mutual and similar agencies, in the manner contemplated by Section 90.35(e) of the Commission’s Rules. CSAA member

¹ Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Memorandum Opinion and Order, WT Docket 99-87, DA FCC 02-82, ____ FCC Rcd. ____ (Released: April 18, 2002) (*MO&O*).

² 47 U.S.C. §309(j)(2).

companies and associations are dedicated solely to “promoting the safety of life and property through the use of wire and radio communication.”³ Central station alarm services act as the “front line” in dispatching municipal police and fire units. Monitors located on a customer’s premises sense fire, intruders, medical emergencies or other threats, and instantly transmit this data to a central station, which, in turn, alerts the dispatch office of municipal authorities in a nearly seamless manner.⁴ The municipal operation then transmits over Public Safety Radio Service frequencies to dispatch the appropriate assistance, whether it is fire, police or ambulance. Often, due to direct interconnection with police departments, assistance is dispatched automatically as part of a seamless public safety dispatch operation. A central station alarm office also may dispatch mobile units of a private security force, where available, further preserving state and local public safety resources. Thus, mobile voice and fixed signaling transmissions work in tandem in “promoting the safety of life and property.”

Regular member companies of the Central Station Alarm Association (CSAA) operate Central Station alarm monitoring systems that have been listed by Underwriters Laboratories Inc. (UL) and/or approved by Factory Mutual Research Corp. (FMRC). Such certification assures customers, their insurance firms and their local emergency service agencies that CSAA members provide the highest quality and most reliable burglar and fire alarm service available to residential and commercial clients.

³ Section 1 of the Telecommunications Act of 1996. 47 U.S.C. § 151.

⁴ The time between the reporting of the alarm and the notification of the appropriate authority of the alarm is generally less than three seconds.

II. CSAA REQUESTS RECONSIDERATION OF THE COMMISSION'S INTERPRETATION OF THE DEFINITION OF “PUBLIC AT LARGE”

CSAA requests reconsideration of the Commission's interpretation of the definition of the term “public at large.” In its *Report and Order*,⁵ the Commission concluded, based on its interpretation of the Conference Report for the Balanced Budget Act,⁶ that Congress intended the public safety exemption to include more than traditional public safety operations. The Conference Report stated that the exemption should include private internal radio services used by “utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments.”⁷ The Commission noted that the primary function of these entities was not to provide traditional public safety services, but recognized that the use of radios by these entities did serve the public good.⁸

In determining how to define which services are used to “protect the safety of life, health, or property”⁹ within the meaning of the statute, the Commission devised the following litmus test:

[W]e conclude that a radio service not allocated for traditional public safety uses will be deemed to protect the safety of life, health or property within the meaning of Section 309(j)(2)(A)(i) if the dominant use of the service is by entities that (1) have an infrastructure that they use primarily for the purpose of providing essential public services to the *public at large*; and (2) need, as part of their regular mission, reliable and available communications in order to prevent or respond to a disaster or crisis affecting the *public at large*.

⁵ Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 99-87, __ FCC Rcd __, FCC 00-403 (rel. Nov. 20, 2000).

⁶ H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997) (“Conference Report”).

⁷ Conference Report at 572.

⁸ Conference Report at ¶76.

⁹ 47 U.S.C. §309(J)(2)(a)(i).

Report and Order ¶77. The Commission did not introduce this standard in the Notice, so CSAA was precluded from commenting on it at that juncture.

It is respectfully submitted that the Commission's current interpretation of the term in regard to the auction exemption does not comport with its use of the term in other contexts. The Commission has long held that common carrier services that entities must subscribe to in order to receive service do indeed serve the "public at large" regardless of whether the public actually subscribes to that service.

In Space Station System Licensee, Inc., *Memorandum Opinion, Order and Authorization*, A2002 FCC LEXIS 658, DA 02-307 (Released: February 8, 2002), the Commission stated that:

"Section 332(d)(1) of the Communications Act, 47 U.S.C. Sec. 332(d)(1), defines CMRS as any mobile radiocommunication service that affords interconnection with the public switched network and is provided for profit to the *public at large* or classes of eligible users comprising a substantial portion of the public."

¶45, fn. 127 (emphasis added). CMRS is clearly a subscription service that is *available* to, and benefits the public at large, but any particular CMRS service is not necessarily used by the public at large. Similarly, in order to receive monitored central station alarm protection, the public at large must subscribe to the service of a central station alarm company. Together, the companies that make up the central station alarm industry serve approximately 21 million customers nationwide. In this regard, central station services are largely indistinguishable from private ambulance services that were cited by the Conference Report as clearly included within the exemption. Private ambulances are only used by a portion of the public, and their activity relates to health and safety. Likewise, alarm services are used by a substantial portion of the public, and

the services provided directly relate to the protection of life, health or property: *i.e.*, the detection of and response to fire alarms, burglar alarms, and medical alert alarms. The Commission seems unduly concerned that including alarm operations in the category of services available to the "public at large" will start down a slippery slope.¹⁰ However, every radio signal sent by a central station alarm company is directly related to safety. This distinguishes alarm operations from other activities in which a radio can be used to summon help in an emergency, but is primarily used for other business activities. It is respectfully submitted that Congress intended the Commission to focus on whether the primary purpose of the communications is safety-related in applying the exemption. Congress did not focus on how widely available the safety-related communications are.

In addition, by adopting a standard that does not include alarm monitoring, the Commission is being unreasonably restrictive. In the post-September 11 era, the alarm industry is being utilized in new and different ways and is becoming more and more akin to traditional public safety services. Communities have begun to require alarm companies to be the first responder to alarms. In certain communities, the alarm company responder is required to be armed. Salt Lake City, Utah, and Los Angeles, California are at the beginning of a trend of municipal governments to depend on and require alarm companies to investigate and effectively "triage" an alarm notification prior to sending governmental public safety personnel to a scene. Such requirements shift the public safety burden from the municipal police department to a private force. CSAA has every expectation that this trend will not only continue, but will

¹⁰ The Commission claims that CSAA's interpretation of "serving the public at large" is overbroad and "would apply to just about any entity that is open for business." *MO&O*, at ¶ 41.

accelerate as municipalities find their budget dollars stretched by new and unforeseen security requirements.

This year, the city of Las Vegas, Nevada, adopted the trend for its fire department when it announced that alarm company representatives must respond to fire alarms before the Las Vegas Department of Fire and Rescue would respond. This places a huge burden on alarm companies to respond as quickly and efficiently as possible to alarms to reduce potential loss of life and property damage. In addition, other municipalities such as Los Angeles and Salt Lake City are exploring the adoption of such a policy.

CSAA member companies and other alarm service providers provide a nearly invisible service that, contrary to the Commission's opinion, affects a great deal of the public. Alarm companies are involved in securing airports, hospitals, and governmental buildings and other federal installations. The Pentagon recently solicited security technology proposals and CSAA members were given the opportunity to solicit bids.

More and more private and governmental entities are depending more on private security and alarm companies for their safety. The Commission's position on what constitutes serving the public at large unnecessarily hampers the growth and evolution of the alarm industry and hampers its ability to serve its customers.

The alarm industry is not looking to gain access to traditional public safety spectrum. However, in future instances of spectrum allocations that the Commission deems will be

primarily available for quasi-public safety activities, the alarm industry is merely seeking the potential opportunity to apply for such spectrum. By focusing on the primary use of the radio operation, rather than trying to draw lines about its availability to the public, the Commission can best implement the safety-related auction exemption.

III. CONCLUSION

WHEREFORE, for good cause shown, CSAA respectfully requests that the Commission reconsider its decision regarding its definition of the term "public at large" in its *Memorandum Opinion and Order* released by the Federal Communications Commission ("Commission") April 18, 2002.

Respectfully Submitted,

Central Station Alarm Association

By

John A. Prendergast
Kathleen A. Kaercher
Its Attorneys

Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20037
(202) 659-0830

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